

Appl. No. 10/680,648

Atty. Docket No. 30207US01

REMARKS

This application has been carefully reviewed in light of the Office Action dated December 30, 2004. By way of this amendment, claims 1 and 10 have been amended and claims 7, 9, 15 and 17 have been cancelled (claims 3 and 18 were previously cancelled). Claims 1, 2, 4-6, 8, 10-14, 16 and 19-21 are currently pending in the application. Applicant hereby requests further examination and reconsideration in view of the following remarks.

1. Applicant would like to thank the Examiner for the courtesies extended during the telephone conference of February 1, 2005, during which the prior art rejection of the claims was discussed. Applicant's representative asserted that the combination of references relied on by the Examiner did not show horizontally pivoting contact elements and offered to amend the claims to bring out this distinction. The Examiner suggested that this be done through a Request for Continued Examination (RCE), which applicant submits herewith.

2. The Examiner has rejected claims 7 and 9 under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner contends that there is an inconsistency between the preamble and the body of the claims. Applicant respectfully disagrees that comparing a claimed element to an element not claimed as a part of the invention necessarily renders the claim indefinite. Nevertheless, in the interest of advancing the prosecution of the present application, applicant has cancelled claims 7 and 9 to overcome this ground of rejection. Applicant has also cancelled claims 15 and 17, which have not been rejected but contain similar language as claims 7 and 9, respectively.

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3. The Examiner has rejected claims 1-21 under 35 U.S.C. § 103(a) as being unpatentable over Perry (3,715,012) in view of Gibson (3,288,249). (For the record, applicant notes that claims 3 and 18 had been previously cancelled.) This ground of rejection is respectfully traversed in light of the present amendment.

Perry discloses a ladder stand-off or "safety device" 1 comprising a V-shaped body member 7 having a pair of diverging arms 8 and 9 that meet at a point. Extensions 10 and 11 extend from the ends of the arms 8 and 9, respectively, and flanges 12 and 13 extend outwardly from the free ends of extensions 10 and 11, respectively. A "wing" 14 and 15 extends from roughly the midpoint of the arms 8 and 9, respectively, and includes means for attaching the device 1 to a ladder. Perry does not disclose pivoting contact elements at the ends of the arms.

Gibson discloses a ladder attachment comprising a U-shaped frame 8 having a "bight" portion 10, which is substantially wider than the ladder D, and two lateral legs 12. The terminal ends 14 of the legs 12 are provided with self-adapting brackets 16 pivotally connected thereto. As is clear from Figures 1-3 of Gibson, the brackets pivot vertically; that is, they pivot about an axis (defined by pin 22) that extends parallel to the plane defined by the two arms 12. The purpose of providing the vertically pivoting brackets 16 is to permit use of the device with roofs of different pitches (see, for example, lines 25-29 in column 3). The brackets 16 are not capable of pivoting horizontally.

Independent claims 1 and 10 of the present application both recite a ladder stand-off comprising a beam, a first arm fixedly connected at a first end thereof to the beam, and a second arm fixedly connected at a first end thereof to the beam. The first and second arms are spaced apart a predetermined distance and extend outward from the beam. A contact element is pivotally connected to the outer end of each arm. Both claims 1 and 10 have been amended to recite

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that each contact element pivots substantially horizontally. Support for these amendments can be found in the drawing figures, which clearly show that for the normal positioning of the ladder stand-off the contact elements pivot horizontally (i.e., about an axis that is perpendicular to the plane defined by the first and second arms).

Applicant respectfully submits that the Perry and Gibson references, even if combined in the manner set forth by the Examiner, fail to render independent claims 1 and 10 unpatentable. Specifically, Gibson only teaches providing pivoting brackets that pivot vertically. Gibson does not suggest brackets capable of pivoting horizontally, as required by claims 1 and 10. Accordingly, the combination of Perry and Gibson, which would have vertically pivoting brackets, does not render claims 1 and 10 unpatentable.

Furthermore, to the extent that other prior art may suggest horizontally pivoting contact elements, it is respectfully submitted that there would not be sufficient motivation or rationale to modify the Perry reference to include such contact elements. This is because Perry teaches arms 8 and 9, extensions 10 and 11, and flanges 12 and 13 that are oriented at various angles with respect to one another. It is through this multi-faceted arrangement that Perry is able to accommodate various surfaces such as poles (Figure 4), corners (Figure 5) and flat walls (Figure 6). Accordingly, there would be no need to provide pivoting heads to enable use with these various surfaces. As such, one of ordinary skill in the art would not be motivated to make such a combination.

In addition to the above failings, the combination of Perry and Gibson does not show the two arms fixedly connected "at a first end thereof" to a single beam as required by claims 1 and 10. Both of claims 1 and 10 recite a first arm fixedly connected at a first end thereof to a beam at a first point located between the two ends of the beam and a second arm fixedly connected at a first end thereof to the same beam at a second point located between the two ends of

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the beam. The ends of the first and second arms 8 and 9 of Perry are connected together at a "V", not to a beam. The outer ends of Perry's first and second arms 8 and 9 support the extensions 10 and 11 and the flanges 12 and 13 and are not connected to a beam. The only "beams" the first and second arms 8 and 9 of Perry are connected to are the wings 14 and 15, and these connections are made near the midpoints of the arms 8 and 9, not "at a first end thereof" as required by claims 1 and 10. The Examiner contends that "portions" of Perry's arms can be viewed as "ends" which are attached to a beam. However, applicant respectfully disagrees that the term "end," as used in the present application can properly be interpreted to include virtually any portion of an arm. In any event, the arms 8 and 9 of Perry are not connected to the same beam, as is required by claims 1 and 10. Instead, the first arm 8 is connected to a first wing 14 and the second arm 9 is connected to a second, distinct wing 15. Although the two wings may function together in a manner similar to a single beam, they are clearly not one beam. Furthermore, claims 1 and 10 also recite that the first and second arms are connected to the beam at different points located between the ends of the beam. In contrast, Perry's first arm 8 is connected to an end of the wing 14 and the second arm 9 is connected to an end of the wing 15.

For the above reasons, it is respectfully submitted that independent claims 1 and 10 are allowable over Perry. Claims 2, 4-6, 8, 11-14, 16 and 19-21 depend from claim 1 or 10 and are thus also believed to be allowable.

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In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration of the objections and rejections is requested. Allowance of claims 1, 2, 4-6, 8, 10-14, 16 and 19-21 at an early date is solicited.

Respectfully submitted,

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Date

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